

JEFFREY T. MAKOFF (Bar No. 120004)
jmakoff@vallemakoff.com
VALLE MAKOFF LLP
388 Market Street, Suite 1300
San Francisco, California 94111
Telephone: (415) 986-8001
Facsimile: (415) 986-8003

Attorneys for Interested Non-Party
DIGITAL DOMAIN 3.0, INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

REARDEN LLC, REARDEN MOVA, LLC,
California limited liability companies,

Plaintiffs,

v.

THE WALT DISNEY COMPANY, a
Delaware corporation, WALT DISNEY
MOTION PICTURES GROUP, INC., a
California corporation, BUENA VISTA
HOME ENTERTAINMENT, INC., a
California corporation, MARVEL STUDIOS,
LLC, a Delaware limited liability company,
MANDEVILLE FILMS, INC., a California
corporation,

Defendants.

REARDEN LLC AND REARDEN MOVA
LLC,

Plaintiffs,

v.

TWENTIETH CENTURY FOX FILM
CORPORATION, a Delaware corporation
and TWENTIETH CENTURY FOX HOME
ENTERTAINMENT LLC, a Delaware
limited liability company,

Defendants.

Civil Action No. 3:17-cv-04006-JST
3:17-cv-04191-JST
3:17-cv-04192-JST
3:17-cv-04187-JST

**DECLARATION OF GREG LASALLE
IN SUPPORT OF NON-PARTY
DIGITAL DOMAIN 3.0, INC.'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR LEAVE TO ISSUE
THIRD PARTY SUBPOENAS**

REARDEN LLC AND REARDEN MOVA
LLC,

Plaintiffs,

v.

PARAMOUNT PICTURES
CORPORATION, A Delaware corporation,
and PARAMOUNT HOME
ENTERTAINMENT DISTRIBUTION INC.,
a Delaware corporation.

Defendants.

REARDEN LLC AND REARDEN MOVA
LLC,

Plaintiffs,

v.

CRYSTAL DYNAMICS, INC. a California
corporation, SQUARE ENIX INC., a
Washington corporation,

Defendants.

1 I, Greg LaSalle, declare:

2 1. I am currently employed by Digital Domain 3.0, Inc. ("Digital Domain" or "DD3")
3 in Los Angeles, California. I make this declaration in connection with Digital Domain's opposition
4 to Rearden's request for leave to serve third-party subpoenas before fact discovery begins in these
5 cases. The statements contained in this declaration are based upon my personal knowledge. If called
6 as a witness in this proceeding, I could and would testify under oath as set forth below.

7 2. From the time it was under development until June or July of 2016, I worked with
8 the technology and system that the Plaintiffs in this case are now calling "Contour." Originally,
9 "Mova" was a company and "Contour" was the facial performance motion capture technology it
10 offered. But the company Mova never offered any other products of significance, and we stopped
11 using the name Contour. The industry has commonly referred to the facial performance motion
12 capture technology as MOVA for many years.

13 3. I helped develop MOVA, used it to perform facial performance motion capture, and
14 managed the MOVA business for OnLive LLC and then DD3.

15 4. I have read and am familiar with Mr. Perlman's April 2, 2018 declaration in this
16 matter.

17 5. I understand that there is ongoing litigation between a corporate affiliate of DD3
18 referred to as VGH and Rearden regarding the status of MO2, LLC and MOVA. I understand that in
19 that litigation the Court stated DD3 cannot use MOVA and that MOVA belongs to one of the
20 entities controlled by Mr. Perlman. I also understand that there is no final judgment in that dispute.

21 6. In paragraph four of his declaration, Mr. Perlman states that the MOVA system
22 includes over thirty-five "Contour computers." He then states that "[t]he Contour computers" are
23 used to operate the MOVA system but that "other [ancillary] Contour computers are used for
24 business, promotion, R&D, further data processing, and other purposes." In fact, there are several
25 categories of computers that were associated with MOVA when it was at OnLive. Approximately
26 35 "capture computers" were used to operate MOVA for facial performance motion capture.
27 Employees who worked on MOVA at OnLive were assigned OnLive "workstations" that they used
28 to do their work, including Ken Pearce and myself. These workstations were not the primary place

1 on which data was stored. Instead, the workstations were used to, for example, process data (such as
2 MOVA output data) that was primarily stored on “MOVA servers.” Finally, business data for
3 MOVA, such as contracts and financial information, were kept at another location.

4 7. In 2012, when OnLive exited the MOVA business, OnLive (or OL2, a kind of
5 successor to OnLive) placed what are now called the “MOVA Assets” into storage. I was directly
6 involved in that effort. The capture computers were placed into storage. So too were some of the
7 employee workstations, including the workstations assigned to Ken Pearce and myself, but not, for
8 example, the workstations of employees who stayed at OnLive or OL2, because those employees
9 continued to use their workstations. Some, but not all, of the MOVA servers were also placed into
10 storage. I do not recall why some of them were placed into storage and not others. The business data
11 for MOVA that was kept at another location was not placed into storage, and my understanding is
12 that it remained with OnLive or OL2.

13 8. The MOVA Assets that were transferred to DD3 in 2012 or 2013 included the
14 capture computers, whatever employee workstations had been placed into storage, and some
15 MOVA servers. Other MOVA servers were retained by OL2. However, before any of those
16 computers were taken from storage, or possibly before they were placed into storage, I ensured that
17 any output files were deleted. As explained below, this was because some MOVA contracts
18 required such data to be deleted and it was therefore standard practice at OnLive to remove the
19 capture data on or about when a job was complete. I also worked with OnLive or OL2 to erase the
20 stored MOVA servers before they were transferred to DD3. As I recall, this was because of a
21 combination of security concerns on the part of OnLive or OL2. At DD3, the computers DD3 used
22 to manage the MOVA business never belonged to OnLive, OL2, or any of the Perlman companies.
23 Finally, although DD3 received the employee workstations in 2012, it did not use them. DD3
24 employees who worked on MOVA were given DD3 workstations. DD3 recycled the workstations
25 retrieved from OnLive or OL2’s storage. DD3 also received certain files, such as the MOVA source
26 code, that OnLive or OL2 had separately placed into storage.

27 9. Therefore, by June or July of 2016, when DD3 placed the MOVA Assets into
28 storage, the only computers that would have had anything resembling the data they had when last

1 used at OnLive were the capture computers.

2 10. In paragraph six of his declaration, Mr. Perlman states that certain files were kept on
3 “Contour computers” (discussed above) and others were kept on “Rearden computers used by
4 Messrs. LaSalle and Pearce.” That last part appears to refer to the OnLive workstation assigned to
5 me (and to the one assigned to Mr. Pearce) as . discussed above. While at OnLive, I was also
6 assigned an Onlive laptop to use when I travelled or was on location. When I left OnLive I was
7 given permission by Charlie Jablonski, CEO of OnLive or OL2, to keep it as a personal computer. It
8 had been administered by OnLive or OL2, so before it became my personal computer they wiped
9 the data and restored it to its factory state.

10 11. To my knowledge and recollection, all of the projects listed in paragraphs 7 through
11 12 of Mr. Perlman’s declaration were performed by OnLive, LLC or its subsidiaries—not Rearden.
12 Mr. Perlman repeatedly states or implies that capture data, including output files, related to those
13 projects was destroyed. He is correct. This was the standard practice at OnLive and I took that
14 practice with me to DD3. Many of our contracts with customers require us to delete or return the
15 raw capture data and other capture outputs from our systems once the work product is delivered to
16 the customer. Other contracts require us to delete that data on demand. None of the contracts require
17 us to keep that data, and throughout my time working with MOVA (at OnLive and at DD3), it has
18 been my practice to delete it. This avoided the expense of storing and maintaining it and allowed me
19 to streamline administration of the MOVA business by removing the need to distinguish between
20 projects requiring immediate deletion and those that did not. It also ensured that the capture
21 computers were ready for the next project, and had ample space to store captured data.

22 12. In paragraph 19 of his declaration, Mr. Perlman refers to output files that would have
23 been generated by DD3’s use of MOVA. In paragraph 26 he complains that this data was not
24 present on the drives that DD3 put into storage, and then escrow, and that are now in the possession
25 of Mr. Perlman. As explained above—and as with the similar files created by OnLive’s use of
26 MOVA—all such data would have been deleted on or soon after the completion of the project for
27 which it was generated. But even if that material had not been deleted, it would not have been put
28 into storage in June or July of 2016 because it was not a MOVA Asset. As I understood it at the

1 time, the material that was to go into storage were the MOVA Assets, which were limited to the
2 material that had come to DD3 from OnLive and its successors. Any output files generated by DD3
3 did not come from OnLive and were therefore not MOVA Assets.

4 13. In paragraph 26 of his declaration, Mr. Perlman asserts that I and my colleagues at
5 DD3 forgot to place certain MOVA Assets into storage and that Mr. Perlman's representatives
6 retrieved those items directly from DD3's studios. The material that was retrieved included lighting
7 equipment and cables. Mr. Perlman asserts that it also included disk drives, but my recollection is
8 that it did not. However, if any drives were given to Mr. Perlman's representatives, they would not
9 have contained any output files because of the reasons discussed above.

10 14. In paragraph 26 of Mr. Perlman's declaration, he states that metadata on the drives
11 retrieved in October 2018 shows that some of them were modified on June 29, 2016. In that
12 paragraph, Mr. Perlman refers to a July 22, 2016 declaration of DD3 president O.D. Welch. Mr.
13 Perlman says that in Mr. Welch's declaration, Mr. Welch asserted that the MOVA Assets had been
14 crated "long prior" to June 29, 2016. I am familiar with Mr. Welch's declaration, and what Mr.
15 Welch actually wrote was that "[a]s of June 24, 2016, all physical assets which are part of MOVA
16 were packed in crates...[and t]hose creates remained packed and at our facility until arrangements
17 were finalized between the DD3 lawyers and lawyers for the Defendants to move them to the
18 storage unit which Defendants had selected." When Mr. Welch stated that "the crates remained
19 packed" after June 24, he may not have been aware, or may have forgotten, that I had reviewed the
20 crated material. Around that time (the end of June, 2016), DD3 was collecting the MOVA Assets
21 and putting them in crates, as Mr. Welch described. For a portion of that time, I was not at the DD3
22 facility, either because of personal or work travel. When I returned to the facility, after June 24,
23 2016, I inspected what DD3 had crated and made sure that output files and other data that did not
24 qualify as MOVA Assets were deleted from the devices in the crates. Consistent with the metadata
25 that Mr. Perlman refers to, I did this work on or about June 29, 2016.

26 15. In paragraph 27 of his declaration, Mr. Perlman asserts that DD3 did not place
27 source code into storage. In June or July of 2016, I personally placed a hard drive containing what
28 MOVA source code we had into a crate that went into storage. Nonetheless, in the face of Mr.

1 Perlman's assertion that there was no source code, and motivated by my concern that somehow all
2 of the source code for MOVA has been lost or destroyed, I struggled to find a surviving repository
3 of source code. During the course of my efforts, I spoke with an internal systems expert at DD3 to
4 seek if there was any way we might possibly recover the data we had deleted from DD3's source
5 code management system, which is the system we used to store the MOVA source code. It was
6 determined that doing so would not be possible. Together, however, we recalled that when DD3
7 first obtained MOVA, we temporarily stored the source code in a secondary system outside of our
8 source code management system. This was a dormant system not actively used, and when we were
9 complying with the preliminary injunction and purging DD3's systems of copies of the source code
10 we forgot about it. Fortunately, we were able to recover the files from that system and make them
11 available (again) to Mr. Perlman. Around that same time and as part of the same effort, we also
12 contacted Mr. Pearce and learned that Mr. Pearce had certain MOVA scripts and other files on his
13 DD3 workstation. We were able to make available to Mr. Perlman any such files that dated back to
14 on or around 2012 (or earlier). After these files were provided to Mr. Perlman, the copies were
15 purged from the secondary system and the workstation, and thus the whole of DD3.


16 16. Mr. Perlman's paragraph 27 concludes with an assertion that the deletion of files
17 from the hard drives provided to his representatives was "substantial and deliberate." I was
18 deliberate in my efforts to help DD3 comply with the June 2016 preliminary injunction that required
19 DD3 to stop using the MOVA Assets and to place into storage, for eventual transfer into escrow, all
20 hardware and software within the scope of the MOVA Assets that DD3 could locate. I did that to
21 the best of my abilities. As part of that effort, I took care to delete from the stored computers and
22 drives any material that was not a MOVA Asset as the term was explained to me, including any
23 output files that DD3 had generated and any new source code or scripts that were original to DD3
24 (DD3 had developed and used MOVA for years at this point, and I understood that Mr. Perlman
25 was entitled to the original files, but not DD3's improvements and not DD3's and DD3's
26 customers' work). As best I could, I helped place all of the original files, and all of the original
27 equipment, into storage.

28 17. DD3 has not, to my knowledge, deleted or modified any of the MOVA-related

1 material, including business records, in its possession, from the time that the MOVA Assets went
2 into escrow until now. As explained above, the MOVA Assets have been transferred and purged
3 from DD3, but I understand that DD3's business records related to the period when it operated the
4 MOVA business remain intact on DD3's systems.

5
6 I declare under penalty of perjury that the foregoing statements are true and correct.

7 Executed this 6th day of June 2018 at Los Angeles, California.

8
9
10 
11 Greg LaSalle